

Attorney Docket No.: 270/070 (UMD-0070)
Inventors: Langenfeld, John
Serial No.: 10/044,716
Filing Date: January 11, 2002
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REMARKS

Claims 1-4, 6, 9, 11-12, 14-25, 27, 29 and 31-64 are pending in this application. Claims 1-64 have been subjected to a Restriction Requirement under 35 U.S.C. §121. Claims 6 and 9 have been amended. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

The Examiner suggests that in Applicants' reply filed November 17, 2004, Applicant was not fully responsive to the Restriction Requirement as a single species of invention was not elected, *i.e.*, either human noggin (SEQ ID NO:4) or mouse noggin (SEQ ID NO:6). Applicant respectfully disagrees with this species election as the human and mouse noggin sequences are so closely related that a search and examination of the entire claim can be made by the Examiner without serious burden. See MPEP 803.02. The courts have held that it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. *In re Harnish*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and *Ex parte Hozumi*, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984). Broadly, unity of invention exists where compounds included within a Markush group (1) share a common utility and (2) share a substantial structural feature disclosed as being essential to that utility. A noggin, whether it be of human or mouse origin, would meet both of these criteria. Thus, Applicant respectfully requests reconsideration of this species election.

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However, in an earnest effort to be completely responsive,
Applicant hereby elects to prosecute a human noggin (SEQ ID
NO:4), with traverse.

Respectfully submitted,



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